



State Water Resources Control Board

December 13, 2016

Mr. Sarge Green
Fresno State Representative to the
North Kings Basin GSA
California Water Institute
California State University, Fresno
6014 N. Cedar Ave.
Fresno, CA 93710

Dear Mr. Green:

I am responding to your request of October 20, 2016, for advice from the State Water Resources Control Board (State Water Board) regarding the eligibility of California State University, Fresno (Fresno State) to serve as a groundwater sustainability agency (GSA) pursuant to the terms of the Sustainable Groundwater Management Act, Water Code section 10720, et seq.

Any local agency or combination of local agencies overlying a groundwater basin may decide to become a groundwater sustainability agency for that basin. (Wat. Code, § 10723, subd. (a).) A "local agency" is defined by the Act as a "local public agency that has water supply, water management, or land use responsibilities within a groundwater basin." (Wat. Code, § 10721, subd. (n).)

The California Code of Education does not explicitly address whether the individual institutions within the California State University system may be considered local agencies. The California Fair Political Practices Commission has, however, categorized the individual CSU institutions as "state agencies" in several of its opinions. When posed with the question of whether California State University, Channel Islands, was a state agency for purposes of adopting a conflict of interest code, the California Fair Political Practices Commission determined that CSU Channel Islands is a state agency. (FPPC File No. A 99-165.) In another instance, the Commission determined that the Associate Dean for the Cal Poly College of Engineering was an employee of a state agency for purposes of the rules applicable to gifts and honoraria. (FPPC Adv. A-98-101; see also FPPC File No. A-85-146 ["California State University, Stanislaus, is a state agency..."].)

In keeping with the Commission's opinions, the State Water Board considers Fresno State to be a state agency and not a local agency as defined by Sustainable Groundwater Management Act. That Fresno State's water supply responsibilities are local in jurisdiction is not determinative in identifying a local agency. For example, the nine regional water quality control

boards have local or regional jurisdiction, but these entities are not local agencies eligible to be or form a GSA.

Because Fresno State lacks the independent authority to become a GSA, a joint powers agency that includes Fresno State as a signatory member will also lack the authority to become a GSA. An agency created by a joint powers agreement holds only those powers that are common to its signatory members. This does not, however, foreclose Fresno State from participating in a GSA that has been formed by a joint powers agreement. Although it cannot be a member, Fresno State may participate in the governance of the GSA if the members agree to grant it a seat on the governing board. An example of a joint powers authority that includes non-member representatives on its governing board is the Sacramento Central Groundwater Authority, whose joint powers agreement is available here:

http://www.scgah2o.org/documents/Sacramento%20Central%20JPA.pdf.

This letter offers a non-binding, advisory opinion. It is not a declaratory decision and does not bind the State Water Board in any future determination.

Sincerely,

Erik Ekdahl Director

Office of Research, Planning and Performance

cc: Mark Nordberg

Department of Water Resources